

1 WO

2

3

4

5

6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8

9 See More Light Investments,) No. CV-08-0580-PHX-LOA
10 Plaintiff,)
11 vs.) **NOTICE OF ASSIGNMENT
12 Morgan Stanley DW Inc.,) AND ORDER**
13 Defendant.)
14

15 Pursuant to Local Rule ("LRCiv") 3.8(a), Rules of Practice, effective
16 December 1, 2007, all civil cases are, and will be, randomly assigned to a U.S. district
17 judge or to a U.S. magistrate judge. This matter has been assigned to the undersigned U.S.
18 Magistrate Judge.

19 After review of the *pro se* Petition and some of its attached exhibits, a
20 number of issues will be addressed herein.

21 **A. Voluntary Consent to Magistrate Judge Jurisdiction**

22 As a result of the aforesaid Local Rule and assignment, if all parties consent
23 in writing, the case will remain with the assigned Magistrate Judge pursuant to 28 U.S.C.
24 636(c)(1) for all purposes, including trial and final entry of judgment. If any party
25 chooses the district-judge option, the case will be randomly reassigned to a U.S. district
26 judge. To either consent to the assigned magistrate judge or to elect to have the case
27 heard before a district judge, the appropriate section of the form, entitled Consent To
28

1 Exercise Of Jurisdiction By United States Magistrate Judge¹, must be completed, signed
2 and filed. The party filing the case or removing it to this Court is responsible for serving
3 all parties with the consent forms. Each party must file a completed consent form and
4 certificate of service with the Clerk of the Court not later than 20 days after entry of
5 appearance, and must serve a copy by mail or hand delivery upon all parties of record in
6 the case.

7 Any party is free to withhold consent to magistrate judge jurisdiction
8 without adverse consequences. 28 U.S.C. 636(c)(2); Rule 73(b), Fed.R.Civ.P.; *Anderson*
9 *v. Woodcreek Venture Ltd.*, 351 F.3d 911, 913-14 (9th Cir. 2003) (pointing out that
10 consent is the “touchstone of magistrate judge jurisdiction” under 28 U.S.C. §636(c). “A
11 party to a federal civil case has, subject to some exceptions, a constitutional right to
12 proceed before an Article III judge.” *Dixon v. Ylst*, 990 F.2d 478, 479 (9th Cir. 1993)
13 (citing *Pacemaker Diagnostic Clinic of Am. Inc. v. Instromedix, Inc.*, 725 F.2d 537, 541
14 (9th Cir. 1984) (*en banc*)).

15 Plaintiff shall have until on or before **Friday, April 18, 2008** within which
16 to make his selection to either consent to magistrate judge jurisdiction or elect to proceed
17 before a United States district judge. A copy of the appropriate consent form mailed to
18 Plaintiff on March 27, 2008 by the Clerk's office to be served with the Petition per the
19 written instructions from the Clerk.

20 **B. Jurisdiction**

21 A review of the Court's file indicates that on March 26, 2008, Dr.
22 Seymour Licht, on behalf of Plaintiff, filed a 56-page document entitled, “Motion that the
23 District Court Issue an Order Vacating the Arbitrators (sic) Order Denying His Claim
24

25
26 ¹The consent/election form was mailed directly from the Clerk of the Court to
27 Plaintiff. A copy may also be obtained from the District of Arizona's website at
28 www.azd.uscourts.gov. To find the consent/election form on the District's web site, click
on “Local Rules” at the top of the page, then click on “Forms” on the left side of the page and
then click on and print the appropriate form.

1 Issued on February 4th, 2008,” containing 171 pages of unnumbered or unlettered
 2 exhibits. (docket #1) Included in the exhibits are pages of a specific Code of Federal
 3 Regulations. (*Id.*, Exhibit (“Exh”) 2 pp. 6 - 13) The Court deems Plaintiff’s 56-page
 4 document a petition to vacate denial of arbitration award pursuant to, presumably, the
 5 parties’ FINRA² Agreement and the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* *A.G.*
 6 *Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1404 (9th Cir. 1992) (per curiam)
 7 (ordering the arbitration award confirmed, and awarding the prevailing party “attorneys’
 8 fees in accordance with the agreements between the parties”).

9 It is well-established that even when a petition is brought under the Federal
 10 Arbitration Act, a petitioner seeking to confirm or vacate an arbitration award in federal
 11 court must establish an independent basis for federal jurisdiction. *Carter v. Health Net of*
 12 *Cal., Inc.*, 374 F.3d 830, 838 (9th Cir. 2004) (citing *Southland Corp. v. Keating*, 465 U.S.
 13 1, 15 n. 9, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984) (noting that “[w]hile the Federal
 14 Arbitration Act creates federal substantive law requiring the parties to honor arbitration
 15 agreements, it does not create any independent federal-question jurisdiction”); *Garrett v.*
 16 *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d 882, 883-84 (9th Cir. 1993)
 17 (discussing Supreme Court cases and collecting Ninth Circuit precedent and cases from
 18 other circuits applying this jurisdictional principle).

19 A federal district court is a court of limited jurisdiction, and the burden of
 20 establishing jurisdiction is on the party claiming jurisdiction. *McNutt v. General Motors*
 21 *Acceptance Corp.*, 298 U.S. 178, 182-183 (1936). “A federal court is presumed to lack
 22 jurisdiction in a particular case unless the contrary affirmatively appears.” *Stevedoring*
 23 *Servs. of Am., Inc. v. Eggert*, 953 F.2d 552, 554 (9th Cir. 1992) (quoting *Stock West, Inc.*
 24

25 ² In July 2007, the National Association of Securities Dealers (“NASD”) became
 26 known as Financial Industry Regulatory Authority or “FINRA.” *Herbert J. Sims & Co., Inc.*
 27 *v. Roven*, 2008 WL 686591, n. 1 (N.D. Cal. 2008); *Martin v. Scott & Stringfellow, Inc.*, 2008
 28 WL 706507 n. 1 (E.D. Va. 2008).

1 *v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir.1989)). “A [district] court has an
 2 obligation to inquire *sua sponte* into its subject matter jurisdiction, and to proceed no
 3 further if such jurisdiction is wanting.” *Feldman v. Allstate Ins. Co.*, 322 F.3d 660, 665
 4 (9th Cir. 2003).

5 As discussed below, Plaintiff will be required to timely file an Amended
 6 Petition to Vacate Denial of Arbitration Award which shall set forth an independent basis
 7 for federal jurisdiction of Plaintiff’s case.³ Plaintiff is forewarned that failure to allege an
 8 independent basis for federal jurisdiction of this case may result in the dismissal of it.
 9 Rule 12(h)(3), FED.R. CIV.P. (“If the court determines at any time that it lacks
 10 subject-matter jurisdiction, the court must dismiss the action.”).

11 **C. Compliance with Rule 8(a), FED.R.CIV.P.**

12 Federal Rule 8(a) of the Federal Rules of Civil Procedure provides in
 13 pertinent part:

14 Claims for Relief. A pleading that states a claim for relief must
 15 contain:

16 (1) a **short and plain statement** of the grounds for the court's
 17 jurisdiction, unless the court already has jurisdiction and the claim
 18 needs no new jurisdictional support;

19 (2) a **short and plain statement** of the claim showing that the
 20 pleader is entitled to relief; and

21 ³ If jurisdiction is based on diversity of citizenship, the Amended Petition shall include
 22 a statement of the citizenship of every party and a description of the amount in dispute. 28
 23 U.S.C. §1332. Plaintiff is informed that (1) a corporation is a citizen of the state where it is
 24 incorporated and the state of its principle place of business and (2) partnerships and limited
 25 liability companies are citizens of every state in which one of their members or partners
 26 resides. 28 U.S.C. §1332(c); *Indus. Tectonics v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir.
 27 1990); *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 692 (7th
 28 Cir. 2003). “Diversity jurisdiction is based on *citizenship*, not residency.” *Kalinowski v.
 Davol, Inc.*, 2006 WL 2615894 * 2 (D. Ariz. 2006) (emphasis in original). “To be a citizen
 of a particular state, a natural person must both be a citizen of the United States and be
 domiciled within that state.” *Id.* (citing *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S.
 826, 828 (1989)).

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Even though *pro se* pleadings are held “to less stringent standards than formal pleadings drafted by lawyers,” *pro se* litigants must become familiar, and comply, with the Rules of Civil Procedure (“FED.R.CIV.P.”) and the Local Rules of Practice for the District Court for the District of Arizona (“LRCiv”). *Carter v. Commissioner of Internal Revenue*, 784 F.2d 1006, 1008 (9th Cir. 1986); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Litigants proceeding *pro se* “must meet certain minimal standards of pleading.” *Holsey v Collins*, 90 F.R.D. 122, 128 (D. Maryland, 1981). “A complaint [or petition] that . . . fails to plainly and concisely state the claims asserted and fails to give the dates and places of the alleged events of which the plaintiff complains, falls short of the liberal and minimal standards set out in Rule 8(a).” *Walton v Shanelec*, 19 F. Supp. 2d 1209, 1210 (D. Kansas 1998).

14 Plaintiff's 56-page, pro se-Petition grossly fails to comply with Fed. R. Civ.
15 P. 8(a) because it is clearly not a "short and plain statement" of Plaintiff's claims
16 supported by brief, material facts as required. Because of its sheer mass, it is extremely
17 difficult to read and comprehend the petition. The extremely large and varying font sizes
18 should be reduced to a uniform font "no smaller than 13 point," LRCiv 7.1(b)(1), and the
19 Amended Petition, consistent with LRCiv 7.2(g), should be limited, if possible, to no
20 more than 17 pages. Plaintiff will be ordered to file an Amended Petition to Vacate
21 Denial of Arbitration Award that complies in all aspects with this Order, Rule 8(a),
22 FED.R.CIV.P., and Local Rules of Practice or this lawsuit may be dismissed without
23 prejudice for failing to comply with court orders. *Ferdik v. Bonzelet*, 963 F.2d 1258,
24 1260 (9th Cir. 1992) (trial courts have the inherent power to control their dockets and in
25 the exercise of that power they may impose sanctions including, where appropriate,
26 dismissal of a case).

27 | //

28 | //

1 **D. Pro se Representation**

2 Since Dr. Seymour Licht is *pro se* and, therefore, is representing his own
 3 interests in Plaintiff, the Court expressly advises him that the United States Supreme
 4 Court has made clear that federal “judges have no obligation to act as counsel or paralegal
 5 to pro se litigants” because requiring trial judges to explain the details of federal
 6 procedure or act as the *pro se*’s counsel “would undermine [federal] judges’ role as
 7 impartial decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 226-227 (2004). “A [pro se
 8 litigant] does not have a constitutional right to receive personal instruction from the trial
 9 judge on courtroom procedure” and that “the Constitution [does not] require judges to
 10 take over chores for a *pro se* [litigant] that would normally be attended to by trained
 11 counsel as a matter of course.” *Id.* (citing *Martinez v. Court of Appeal of Cal., Fourth
 12 Appellate Dist.*, 528 U.S. 152, 162 (2000)).

13 It is unknown if Dr. Seymour Licht is a lawyer and whether there are any
 14 other partners in the Plaintiff See More Light Investments. While a natural person can
 15 always appear *pro per*, a non-lawyer may not represent other persons, partners or, with a
 16 few minor exception not applicable herein, a corporation, an entity unto itself quite
 17 separate from its owners and officers. *Boydston v. Strole Development Co.*, 193 Ariz. 47,
 18 50, 969 P.2d 653, 656 (Ariz. 1998).⁴ “Except as herein otherwise provided, only
 19 members of the bar of this Court shall practice in this District.” LRCiv 83.1(b). Dr. Licht
 20 will be permitted to represent only himself unless he fully meets the Local Rules’
 21 requirements. If not represented by counsel in the Amended Petition, Dr. Licht shall
 22 explain his relationship to Plaintiff in the Amended Petition and any other persons and
 23 entity having a financial interest, if any, in Plaintiff See More Light Investments.

24 Accordingly,

25

 26 ⁴ Under Rule 31, Ariz. R. Sup.Ct., corporate officers may, for example, represent
 27 corporations in justice courts, small claims proceedings, the general stream adjudication,
 28 before the department of environmental quality, and in other special proceedings. *Boydston*,
 193 Ariz. at 50 , 969 P.2d at 656

1 **IT IS ORDERED** that Plaintiff shall file on or before **Friday, April 18,**
2 **2008** his written election to either consent to magistrate judge jurisdiction or elect to
3 proceed before a United States district judge.

4 **IT IS FURTHER ORDERED** that Plaintiff shall serve upon the
5 Defendant the appropriate consent form provided at or near the time of the filing of his
6 petition.

7 **IT IS FURTHER ORDERED** that Defendant shall either consent to
8 magistrate judge jurisdiction or elect to proceed before a district judge within twenty (20)
9 days of Defendant's formal appearance herein.

10 **IT IS FURTHER ORDERED** that Plaintiff shall file an Amended Petition
11 to Vacate Denial of Arbitration Award on or before **Friday, April 18, 2008** that complies
12 in all aspects with this Order, Rule 8(a), FED.R.CIV.P., and Local Rules of Practice or this
13 lawsuit may be dismissed without prejudice. No exhibits shall be attached to the
14 Amended Petition as numerous exhibits have already been filed herein. Exhibits may
15 filed with dispositive motions pursuant to Rule 56, FED.R.CIV.P.

16 **IT IS FURTHER ORDERED** that counsel and any party, if
17 unrepresented, shall hereinafter comply with the Rules of Practice for the United States
18 District Court for the District of Arizona, as amended on December 1, 2007. The
19 District's Rules of Practice may be found on the District Court's internet web page at
20 www.azd.uscourts.gov/. All other rules may be found as www.uscourts.gov/rules/. The

21

22

23

24

25

26 ///

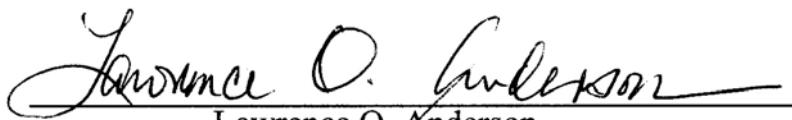
27 ///

28 ///

1 fact that a party is acting *pro se* does not discharge this party's duties to "abide by the
2 rules of the court in which he litigates." *Carter*, 784 F.2d at 1008.

3 **IT IS FURTHER ORDERED** that counsel and any party, if
4 unrepresented, shall use the above caption, number and initials until further order of the
5 Court.

6 Dated this 31st day of March, 2008.

7
8 
9 Lawrence O. Anderson
10 United States Magistrate Judge

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28